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PUC PROJECT NO. 51830

REVIEW OF CERTAIN RETAIL	**§**	**PUBLIC UTILITY COMMISSION**
ELECTRIC CUSTOMER	**§**	
PROTECTION RULES	**§**	**OF TEXAS**

TEXAS LEGAL SERVICES CENTER
AARP TEXAS
REPLY COMMENTS ON
PROPOSAL FOR PUBLICATION OF AMENDMENTS OF 16 TAC §25.43. 25.471, 25.475, 25.479. AND 25.498 AND NEW §25.499
AS APPROVED AT THE JULY 29 OPEN MEETING
SEPTEMBER 7, 2021

Executive Summary

Texas Legal Services Center (TLSC) and AARP Texas have reviewed the comments submitted by other parties on the Proposed Rule. Our Reply is summarized as follows:

- The comments filed by retail electric providers (REPs) propose changes that would increase the POLR rate as much as possible to place price risk on residential consumers and use a high POLR rate as a marketing tool to gain market share during a mass transition.
- POLR service could be structured to place downward pressure on electricity prices and provide more affordable firm service to prepaid customers paying prices capped at the POLR rate. Instead comments express concern that a POLR rate that is too low would drive prepaid providers out of business.
- There is industry support for having residential customers take indexed rates and have residential customers pay the actual costs of ancillary services and thereby inappropriately place price risk on residential customers.

- Many in the industry do not support the Acknowledgement of Risk or want to bury it in the Electricity Facts Label.
- The transmission and distribution utilities (TDUs) have submitted a uniform template to provide information about load shedding to customers. The template misses the point and provides useless information that customers, especially critical care and chronic condition customers probably know already.

I. Introduction

Texas Legal Services Center (TLSC) and AARP Texas filed comments on the Proposed Rule to inform the Commission of the need to provide affordable utility service to low-income and elderly customers and customers with disabilities, who together represent a significant portion of the Texas population. Our comments stand out in the midst of many filings in this project that say the exact opposite. These replies speak to our disappointment that the majority of comments recommend high POLR rates, prepaid service, and having customers bear the financial risk of the market through indexed rates and pass through of ancillary service costs. These positions are the opposite of our recommendations.

POLR fails to create downward pressure on prices in the market which negatively impacts all customers, especially those who are low-income, elderly and have disabilities. If REPs want guaranteed recovery of their costs then they are describing a regulated market. The combination of securitization of losses incurred during the Winter Storm and the pass though of costs to residential consumers is characteristic of a regulated market; however, there is no oversight of the actual costs being incurred and no assurance that the prices charged for electricity are just and reasonable. If the industry wants to bear no risk then it should be regulated.

II. Provider of Last Resort (POLR)

POLR should be the pillar of the retail market, yet for too long it has been used for purposes that serve REPs much more effectively than consumers. Throughout the Initial Comments there are assertions that the POLR rate should be high and temporary.

The Coalition of Competitive Retailers (CCR) in its Initial Comments states: "POLR service is not meant to be a long term service for customers." (Page 1) CCR points out that "the Commission has adopted a set of rules that incent POLR providers to charge a competitive rate instead of the POLR rate." (Page 2) One of the advantages of the current rules for REPs is that REPs who serve as POLR can market lower priced products to the customers assigned to their POLR service. Texas Energy Association for Marketers (TEAM) claims "however, after September 2022, the proposed formula may produce a lower rate than will provide sufficient headroom for other products." (Page 7)

POLR as a high priced and short term rate has been established by Commission rule. This construct has harmed consumers and made the market less competitive. PURA §39.106 describes POLR as a standard retail service package that is available to any customer. It is time the Commission use its rulemaking authority to create a POLR that actually helps consumers.

We note that many comments were filed indicating that the rate resulting from the proposed POLR formula needs to be higher. TEAM asks that the customer charge be increased from 6¢ to 9¢ per kWh and that the multiplier be increased from 120% to 125%. (Page 8) TEAM also proposes a floor of for the energy charge of 7.25¢ per kWh. (Page 6) The floor of 7.25¢ increased by 125% is 9.06¢. Add the 9¢ customer charge and the lowest POLR rate possible would be 18.06¢ per kWh. Most people can't afford that.

The POLR process has been tested and revised before. On June 10, 2002, New Power, the cash strapped Enron affiliate, announced it was abandoning the state's electric market and switching its nearly 80,000 customers to other providers.[1] Subsequently, changes were made to process mass transitions and avoid placing customers whose REPs go out of business on POLR.

The challenge before the Commission is to redesign POLR so that it benefits consumers, not REPs. With a properly designed POLR rate, customers dropped to POLR could take their time choosing another supplier, not frantically sign up on a market rate with the POLR provider to get away from high rates. POLR should be an option for: people who move to Texas and don't know how to select a REP, prepaid customers who need a dependable reasonably priced alternative and customers subject to a switch-hold because they have a deferred payment arrangement with the REP. The POLR should have the obligation to serve and the Commission should utilize the POLR in the market to place downward pressure on prices, not to make a market based offer from the POLR provider look as attractive as possible.

III. Prepaid Service

TLSC and AARP Texas have consistently opposed prepaid service. It is a high-priced product targeted to low-income customers who can experience multiple disconnections in a month. The price cap for a prepaid product is the POLR rate.

TEAM explicitly states that "POLR pricing that is too low may affect REPs ability to offer prepaid pricing." (Page 7) Windrose Energy provided comments that the proposed POLR formula would "set an unrealistically low price for prepaid service estimating the residential rate for a Large Service Provider would be 8.754¢ per kWh." (Page 7) Windrose further states that "prepaid providers who charge at the cap would lose money. The result would be that no retailer

[1] The History of Deregulation in Texas, A Special Research Project by Cities Aggregation Power Project, Inc., p. 38

would provide prepaid service. Windrose explains that prepaid customers are often the least well off in our community and have prepaid service because they have poor credit and can't afford large deposits required with prepaid service. (Page 8)

We urge the Commission to establish POLR service as a standard retail service package at a fixed rate that is available to all customers and include it on the Power to Choose website so that prepaid customers and all other customers have access to affordable reliable electricity. Setting a high rate POLR effectively increases prices for residential consumers when instead it could be used as a tool for putting downward pressure on rates.

IV. Definition of Fixed Price

The industry also has ideas for making a fixed price product a variable priced product. The Alliance for Retail Markets (ARM) would include only "known" ancillary service charges in fixed priced products meaning that additional ancillary service could be charged of top of the "fixed" price. (Page 15) TEAM acknowledges that "until recently, the ancillary service charges also did not seem that volatile." (Page 6) TEAM later explains that ancillary service costs may be problematic if they continue to be as volatile as they have been this year and indicates a pass through should be allowed in the rules. (Page 7) CCR holds that a REPs decision to pass through ancillary service charges is a competitive decision and that it is unnecessary for the Commission to prohibit a REP from including specific cost drivers in their product pricing. (Page 2)

From the consumer's perspective a rate that passes through ancillary service costs may look like a better deal than it is. It is also impossible to compare fixed rates if they do not cover all the costs to the customer. Customer confusion is an age old sales tactic and these rules should be written and adopted to minimize customer confusion. Equally important is making sure that

REPs, not customers accept financial risk for changing wholesale prices. From their comments, it appears TEAM, CCR, and ARM are unwilling to hedge wholesale prices and accept financial risk in the market.

V. Prohibition on Sale of Indexed Products and Products that Pass Through Ancillary Service Charges to Residential and Small Commercial Customers

The Office of Public Utility Counsel (OPUC) is the only party that joined TLSC and AARP in asking the Commission to prohibit the sale of indexed products and products that pass through ancillary service charges to residential and small commercial customers. ARM informs the Commission that products indexed to NYMEX and other similar products do not carry anywhere near the same volatility as wholesale-indexed products. (Page 24) CCR supports the Acknowledgement of Risk disclosure proposed in the rule as an acceptable method of ensuring that customers understand the price volatility and risk associated with the products. (Page 2) TEAM recommends that the Acknowledgment of Risk be eliminated. (Page 3) ARM asks that the Commission include the Acknowledgment of Risk in the Electricity Facts Label. (Page 16)

Robert L. Borlick claims that the prohibition of indexed and pass through rates denies small customers the right to manage their financial risk and to limit their ability to reduce their electric bill through demand response. (Page 3) This is yet another strategy to shift the financial risk of the wholesale market from the REP to the consumer. Demand response can take place in the absence of indexed rates. Customers can also manage their electric bill financial risk by choosing a fixed rate product and still participate in demand response. The REP could manage its financial risk through voluntary programs to reduce load and costs when wholesale prices are high and compensate retail customers for their participation.

TLSC and AARP Texas oppose any rate that places responsibility for managing financial risk on the customer. We fully agree with OPUC's conclusion. "If professionals fail to predict prices that high, customers signing a waiver cannot be expected to predict or comprehend the resulting rate increase possibilities. It is not enough to have customers sign a waiver. OPUC believes that all indexed products should be prohibited for residential and small commercial customers." (Page 4)

VI. Load Shedding Information

The transmission and distribution utilities (TDUs) provided comments with a template for providing "Important Information About Electricity Load Shedding and What It Could Mean to You." The effect of the document is to explain that the TDU has no control over the grid and that during an outage, customers are on their own. It appears to be a collective effort by the TDUs to have a Commission approved document that sheds them of any legal liability for providing reliable power.

The requirement for public notice is a response to the Winter Storm where millions of customers were without power for days. Many customers with family members dependent on electricity struggled to keep them alive. The template completely misses the point. During the Winter Storm ERCOT directed the TDUs to curtail a certain amount of load. ERCOT did not direct the TDUs to curtail specific circuits or customers. These decisions were made by the TDUs. What the template should explain is how the TDUs identified the loads to curtail.

Further, it would be helpful to explain how customers can learn what the load shedding priority is for their address. This information is extremely important to critical care and chronic condition customers in their planning for emergencies such as the Winter Storm.

There is no mention of a contact to call for information about an outage. The template refers customers to the PUC website for information about how to reduce electricity use during times of involuntary load shedding. During the Winter Storm voluntary load shedding was impossible for the millions who had no power to shed.

We are attaching to these comments a document filed in project No. 51812 filed by the Texas Durable Medical Equipment Power Task Force "ISSUES RELATED TO THE STATE OF DISASTER FOR THE FEBRUARY 2021 WINTER WEATHER EVENT." See page 10.

TLSC filed comments on the Strawman Rule recommending that the public service notices required by §22.479(d) include specific requirements for notification of critical care and chronic condition customers twice a year to provide more detailed and helpful information such as how involuntary load shedding can affect their power supply, the steps the utility and REP have taken to provide a safety net in the event their power is unavailable, a dedicated phone number answered by a knowledgeable person to call for information about unplanned outages, and contact information for requesting emergency assistance. The template provided by the TDUs falls far short of our expectations.

VII. Summary and Conclusion

The collective Initial Comments of all the parties stack the deck against the consumer. The events of the Winter Storm created a public outcry that reached beyond the borders of Texas and resulted in new laws, and a new Commission. The stage has been set for change. Yet those who profit from the market would like to see it stay relatively the same as it was before the Winter Storm.

TLSC and AARP stand by our Initial Comments as being in the best interests of all residential customers including low-income customers, elderly customers and customers with disabilities. It is wholly within the Commission's authority to make profound changes in customer protection that will enhance the price and quality of service in the electricity market. We urge you to take affirmative action for residential customers.

We look forward to reviewing the Reply Comments and working with the Commission and other parties in the interest of low-income customers, elderly customers, and customers with disabilities.

Respectfully submitted:

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TEXAS DISASTER PREPAREDNESS

DURABLE MEDICAL EQUIPMENT POWER TASK FORCE

July 5, 2021

February's Winter Storm Uri blackout profoundly affected many Texans with disabilities who rely on powered durable medical equipment (DME) for their survival and wellness. In response to this disaster the Texas State Independent Living Council and Governor's Committee on People with Disabilities gathered disability stakeholders to form a cross-disability Durable Medical Equipment Power Task Force to identify solutions for meeting emergency power needs for individual users of DME living in the community. The task force is comprised of AARP Texas, The Arc of DFW Area, Disability Rights Texas, Texas Council for Developmental Disabilities, Texas Legal Services Center, Texas Medical Equipment Providers (TexMEP), Texas Parent to Parent, stakeholders in healthcare and emergency response, disability advocates, and other agencies serving Texans with disabilities.

Many Texans who depend on DME lack the physical and financial resources required to provide their own back-up power. Based on our own experiences and information gathered, the task force established a list of inclusive emergency planning recommendations for consideration and implementation by the Public Utility Commission (PUC) of Texas.

To protect the lives of Texans dependent on DME, the PUC must utilize its leadership role to coordinate electric utility disaster response plans with the Texas Department of Emergency Management (TDEM) and advocacy organizations. Inclusive planning and operations are needed to ensure critical lifelines are sustained for DME-dependent consumers in the event of an unplanned outage. In the planning process, electric utilities, in coordination with TDEM and local offices of emergency management, should implement the following:

- Establish a process to utilize contact information for critical care and chronic condition residential customers to conduct wellness checks during extended outages.
- Establish a dedicated toll-free telephone number available 24/7 for critical care and chronic condition residential customers to call for information about unplanned outages.

- Provide back-up batteries and battery charging options for DME for critical care and chronic condition residential customers.
- Provide emergency portable generators to critical care and chronic condition residential customers.
- Fund a back-up power grant program for households that meet appropriate income guidelines and eligibility criteria. See the PG&E Disability Disaster Access and Resources program as an example.
- Coordinate with local offices of emergency management to identify emergency power reserves for local dialysis clinics.
- Protect individuals with temperature-sensitive conditions during unplanned power outages.
- Provide medically necessary refrigeration during unplanned outages.
- Develop other applicable measures for building a safety net for critical care and chronic condition residential customers.

Respectfully submitted,

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